

**ITA's Inquiry into the Status of the Russian Federation as a Non-Market Economy
Country Under the Antidumping and Countervailing Duties**

U.S.-Russia Business Council Rebuttal Comments

February 7, 2002

I. The extent to which the currency of the foreign country is convertible into the currency of other countries.

A. Public Comments

1. Dewey, Ballantine and Skadden, Arps

Their submission states that "Russia's currency is not freely convertible. Residents in Russia face significant barriers to free convertibility of funds obtained or used in international commercial transactions."

2. Wiley, Rein & Fielding LLP

Their submission states that "of course, citizens use foreign currencies on the black market," and quotes USTR's Foreign Trade Barriers Report as saying "Russia has encountered difficulties because of swings in the ruble's value subsequent to the financial crisis of 1998."

3. The Ad Hoc Committee of Domestic Nitrogen Producers

Their submission states that "The Russian ruble is not freely convertible due to the Russian Government's extensive currency controls."

4. Schagrin Associates

Their submission states that "The existing high levels of restrictions on currency conversion are not indicative of a free market."

B. USRBC rebuttal

It is precisely because of the lack of exchange-rate volatility in the past two years that there no longer exists a black market for currency in Russia. The currency of the Russian Federation, the ruble, is convertible for both domestic and current-account transactions. For the past two years, the Russian Central Bank has allowed the ruble to depreciate steadily in line with domestic inflation. Within Russia, the ruble can be freely exchanged for other currencies to purchase foreign goods and services, which means that it is "internally convertible." The only restriction is that, effective July 20, 2001, Russian exporters must convert 50 percent of their export revenues on the market (down from 75 percent, effective January 1999). The aim of this limit is to restrain capital flight.

II. The extent to which wage rates in the foreign country are determined by free bargaining between labor and management.

A. Public Comments

1. Wiley, Rein & Fielding

Their statement refers to, among other things, the absence of a fair working wage as demonstrative of the fact that Russian prices do not represent fair value. Their submission also states that "Russian wages are extremely low, with the current monthly minimum wage at 200 rubles, or about U.S. \$7.00." Finally, it notes that "any labor reform is likely to come at the expense of worker rights."

2. Dewey, Ballantine and Skadden, Arps

Their submission states that, "Because Russia lacks a true labor movement and enforceable worker rights, wage rates cannot be determined on the basis of free bargaining," and that "Workers are commonly paid late or with goods rather than money, underscoring their lack of bargaining power."

3. Schagrin Associates

Their submission states that, "Labor conditions in Russia are far from ideal. Prior to the upturn in the economy, Russian workers faced serious difficulties in even receiving their wages. This injustice continued for years, in some cases."

4. Ad Hoc Committee of Domestic Nitrogen Producers

Their submission states that, "Both the government and enterprises are guilty of substantial wage arrears, trapping millions of workers in their current jobs and reducing them to poverty."

B. USRBC Rebuttal

The above assertions are out of date. Wage arrears have been dramatically reduced, and public-sector arrears have been virtually eliminated. On December 31, 2001, President Putin signed the new Labor Code into law. This seeks to boost job security, locking in workers' rights and penalizing employers for delays in paying wages. The new code formally provides for a 40-hour work week, enshrines the right to paid leave after six months' employment instead of 11 months, and sets 28 days as the minimum vacation entitlement. It stipulates that the minimum wage shall be raised to the subsistence level within two years. The average monthly wage in Russia in November 2001 was \$122. Wage rates in the Russian Federation are now largely determined by free bargaining between labor and management.

III. The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country.

A. Public Comments

1. Schagrin and Associates

Their submission states that, "Rather than relaxing barriers to foreign investment, further restrictions on foreign investment are currently envisioned. The Russian Administration and the State Duma are discussing additional legislation which would specify areas in which foreign investment should be prohibited or restricted."

2. Dewey, Ballantine and Skadden, Arps

Their submission states that, "Russia's weak system of corporate governance dramatically increases risks to foreign investors."

3. Wiley Rein & Fielding LLP

Their submission states that, "As the Department has previously recognized, the factors inhibiting foreign investment in Russia include political and economic stability; the lack of solid corporate governance laws; and impractical trade, tax, and investment regulations."

B. USRBC rebuttal

Joint ventures and other investments by non-Russian firms are not only permitted in the Russian Federation, but the encouragement of joint ventures and investment activity is a stated government policy, and there is abundant evidence of policy implementation in support of this overarching objective. Russia has established an open investment regime based on the non-discriminatory treatment of foreign investors, the right of foreigners in many circumstances to fully own Russian firms, a set of investment guarantees based on internationally recognized practices (such as access to international arbitration), a growing number of bilateral investment treaties, and investment incentives such as favorable tax regimes under production sharing agreements. (See Russia's Law on Foreign Investment of July 1999, which inter alia, established "no worse than national treatment" for foreign investors.)

The Russian Federation has actively sought foreign direct investment (FDI). Cumulative FDI through July 1, 2001, amounted to \$17.6 billion. Gross foreign investment in Russia in 2000 rose by 14.6 percent year-on-year from 1999 to \$10.958 billion, of which foreign direct investment accounted for 40.4 percent (\$4.429 billion). In cumulative terms, the largest investors in Russia by the end of 2000 were the U.S., Cyprus (an indication of Russian flight capital returning for investment purposes), and Germany.

A list of U.S. investors is available on the following websites.

U.S.-Russia Business Council: www.usrbc.org

American Chamber of Commerce in Russia: www.amcham.ru

U.S. Department of Commerce Business Information Service for the Newly Independent States: www.bisnis.doc.gov

Among Russia's numerous legislative accomplishments last year in support of its investment framework was the adoption of amendments to the Joint Stock Companies Law. These amendments strengthened shareholders rights by closing loopholes previously exploited in corporate governance violations. Additionally, the Russian government approved a full draft Corporate Governance Code in December 2001, based on OECD guidelines and with input from the private sector, and the final version is expected in February 2002.

Since his appointment as Acting President on December 31, 1999, Vladimir Putin has provided a remarkable degree of political and economic stability in the Russian Federation.

IV. The extent of government ownership or control of the means of production.

A. Public Comments

1. Schagrin Associates

Their submission states that, "the Russian government maintains extensive control over several important monopolistic industries that preclude Russia's classification as a true market economy."

2. Dewey, Ballantine and Skadden, Arps

Their submission states that, "The Russian Federation's claim that only 25 percent of the economy is based on 'state enterprises' is unsupportable."

B. USRBC Rebuttal

The Russian Federation has privatized a large majority of the ownership and control of the means of production. As a result of early privatization, as much as 70 percent of Russia's GDP originated in the privatized sector as early as 1997 (see Anders Aslund, "Has the Russian Economy Turned the Corner?"), which is exactly the same proportion found in France in the mid-1990s. Only 12 percent of the enterprises in Russia are currently entirely state-owned, while approximately 88 percent of firms involve some degree of private ownership. By comparison, state-owned companies represent 25 percent of the corporate sector in Sweden, where 7 of the country's 10 largest companies (excluding financial firms) have state ownership.

Comparative analysis of the government role in European economies casts Russia in a particularly favorable light. According to the OECD, government outlays as a percentage of GDP in 2000 were 51 percent in France and 53 percent in Sweden, whereas Russia stood at just 30 percent. Even more striking, the corresponding figure in the UK was 37 percent and the U.S. ratio was 30 percent ? exactly the same as Russia's.

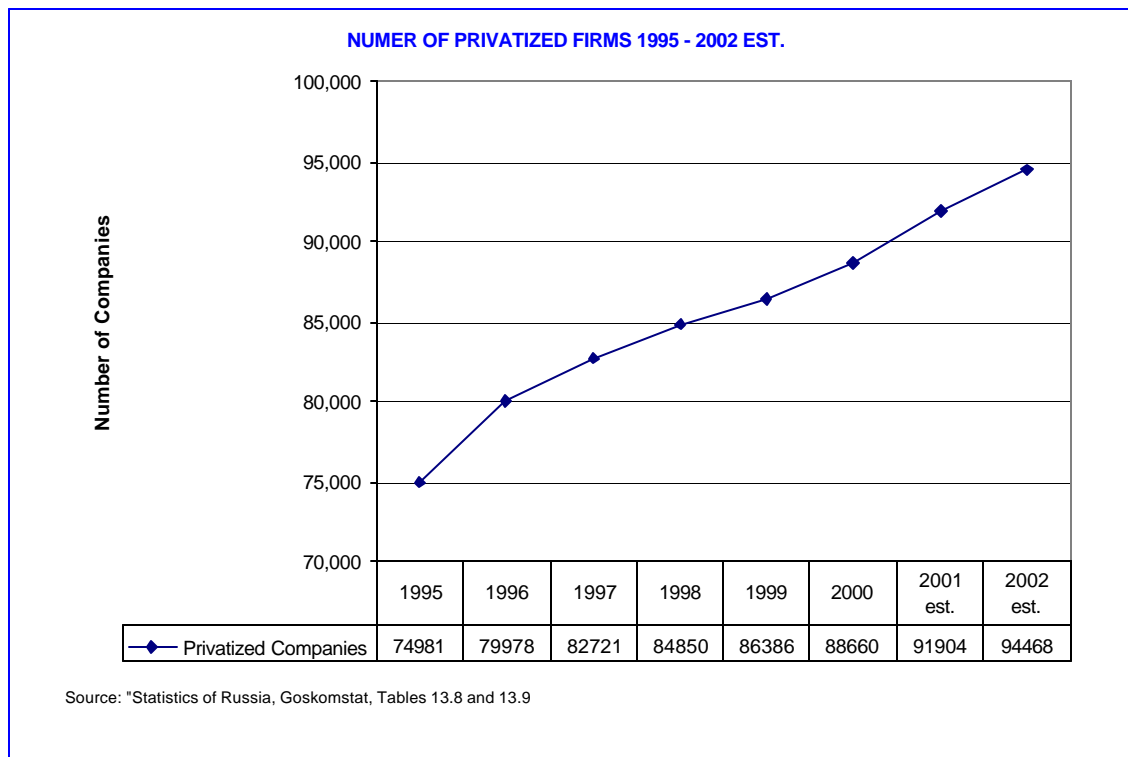
The privatization trend continued in 2001, as did the trend toward fair, open and competitive tender processes (for example, the Onako privatization). The number of privatized companies in the Russian Federation in 2001 was more than 2.5 million, which accounts for three-quarters of all Russian legal entities (see Goskomstat statistics, www.gks.ru, table below).

Allocation of Enterprises & Organizations

ENTERPRISES AND ORGANIZATIONS BY TYPES OF OWNERSHIP						
	1996	1997	1998	1999	2000	2001
	Number of enterprises and organizations, thou.					
Total	2249.5	2504.5	2727.1	2901.2	3106.4	3346.5
Of which by the types of ownership:						
State property	322.2	232.8	142.5	147.9	149.6	150.8
Municipal property	197.8	184.4	177.6	183.3	197.7	216.6
Private property	1425.5	1730.5	2014.1	2146.8	2311.9	2509.6
Property of public and religious Organizations associations)	95.0	129.5	157.8	183.1	213.1	223.0
Other property types including mixed Russian property, foreign, joint Russian and foreign	209.0	227.4	235.1	240.1	234.1	246.5
	Percentage of the total					
Total	100	100	100	100	100	100
Of which by the types of ownership:						
State property	14.3	9.3	5.4	5.1	4.8	4.5
Municipal property	8.8	7.4	6.5	6.3	6.4	6.5
Private property	63.4	69.1	73.9	74.0	74.4	75.0
Property of public and religious Organizations (associations)	4.2	5.2	5.8	6.3	6.9	6.7
Other property types including mixed Russian property, foreign, joint Russian and foreign	9.3	9.0	8.6	8.3	7.5	7.3

In addition, the number of firms that have been privatized has continued to increase since 1995, with the pace of privatization expected to increase by 6.5 percent annually for the next several years, as demonstrated in the table below (see Goskomstat “Statistics of Russia” www.gks.ru/eng, table below).

Number of Privatized Firms



V. The extent of government control over allocation of resources and over price and output decisions of enterprises.

A. Public Comments

1. Ad Hoc Committee of Domestic Nitrogen Producers

Their submission states that in considering Russia's situation, it is evident that substantial structural differences, including many vestiges of Soviet-era central government control, distinguish the Russian economy today from the economies of those countries for which NME status has previously been revoked.

2. Wiley, Rein and Fielding, L.L.P.

Their submission states that, "The Russian government directly and strongly interferes in production, price and output decisions."

3. Dewey, Ballantine and Skadden, Arps

Their submission states that, "the growth of new business, as well as the reallocation of labor and other resources among existing enterprises, has been stifled by the continuation of Soviet-era corporate structures."

B. USRBC Rebuttal

The Russian Federation has, to a large extent, privatized control over the allocation of resources and over the price and output decisions of enterprises. This has been illustrated in the past few weeks by the oil industry. In spite of pressure from OPEC to cut crude exports by 150,000 barrels a day, market forces prevailed as the Russian oil majors have stepped up their output of crude and products.

The Russian Federation has also removed itself, to a large extent, from control over the allocation of resources and the price and output decisions of enterprises. In fact, the state regulation of prices covers products and services that correspond to only 15 percent of Russia's GDP. In the framework of a far-reaching plan for the development of the Russian economy over the next 10 years adopted in July 2000, Russia is decreasing regulation of its natural monopolies.

VI. Such other factors as the administering authority considers appropriate.

A. Public Comments

1. The Ad Hoc Committee of Domestic Nitrogen Producers

Their submission states that, "The business environment is still remarkably hostile to foreign investment."

2. Wiley, Rein and Fielding

Their submission states that, "Russia is infected with widespread corruption – a phenomenon that prevents the fair pricing of merchandise necessary for the country to be considered a true market economy."

3. Schagrin Associates

Their submission states that, "Russia hopes to eventually open its economy more to the world and become a member of the WTO, but the necessary reforms will take several years at a minimum to implement."

4. Dewey, Ballantine and Skadden, Arps

Their submission states that, "The judicial system, political freedoms and the rule of law are severely underdeveloped."

B. USRBC Rebuttal

The U.S.-Russia Business Council requests consideration of the following important factors supporting Russia's eligibility for market economy status.

- The Putin administration and the Kasyanov government proposed, and the legislature adopted, more economic restructuring legislation in 2001 than was passed in 8 years under President Yeltsin (e.g. tax reform, land reform, a money-laundering law, etc.). A further raft of reform legislation will be submitted in 2002. Russia is undertaking a range of structural reforms, including judicial reform, pension reform, and licensing measures.

- The Russian government is mounting an increasingly effective campaign against corruption, as evidenced by the licensing and judicial reforms passed last year and the coordinated effort to clean up the railways industry.
- President Putin has pushed strongly for Russia's accession to the World Trade Organization (WTO), and WTO Director Mike Moore expects Russia to join the organization by mid-2003. The Russian parliament is currently revising 55 Russian laws to bring them into compliance with WTO norms.
- The top ratings agencies agree that Russia has become an increasingly attractive place to invest. Fitch, S&P and Moody's have raised their ratings and upgraded the outlook on Russia from stable to positive, with Fitch citing "exceptional macroeconomic performance and acceleration in structural reform," that makes Russia "well placed to weather even a severe global downturn."